

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHESTER BODMAN,

Plaintiff,

Hon. Gordon J. Quist

v.

Case No. 1:11 CV 600

ASHLEY BADDER, et al.,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff initiated this action on June 8, 2011, against numerous individuals including a nurse whose identity was unknown to Plaintiff. This particular Defendant is identified in the Court's records as Unknown Party #1. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's claims against Unknown Party #1 be **dismissed** for failure to failure to timely effect service.

Federal Rule of Civil Procedure 4(c) indicates that "[a] summons must be served together with a copy of the complaint." The time frame within which service must be effected is articulated in Rule 4(m), which provides that if service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, "the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time." If the plaintiff demonstrates good cause for such failure, however, the court "must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m).

Plaintiff initiated this action on June 8, 2011. On August 24, 2011, the Court dismissed many of Plaintiff's claims, but concluded that Plaintiff's complaint be served on several Defendants

including Unknown Party #1. While service was effected on the other Defendants, service, obviously, could not be effected on Unknown Party #1. In the more than two years since initiating this action, Plaintiff has failed to identify Unknown Party #1. Plaintiff has likewise neither requested assistance identifying this individual nor an extension of time to effect service on him. Considering Plaintiff's lack of diligence, the Court recommends that Plaintiff's claims against Unknown Party #1 be dismissed without prejudice for failure to timely effect service.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Plaintiff's claims against Unknown Party #1 be **dismissed without prejudice for failure to timely effect service**.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: August 7, 2013

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge